

<sup>2</sup> The Board notes that following the January 25, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **ISSUE**

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

## **FACTUAL HISTORY**

On March 12, 2015 appellant, then a 51-year-old letter carrier, filed an occupational disease claim (Form CA-2) for a right foot condition that he attributed to prolonged walking and standing. He noted that he first became aware of his condition and realized its relation to his federal employment on February 3, 2015. In a separate statement dated March 11, 2015, appellant indicated that over the past 11 years he had walked six to eight hours daily. He gradually developed a bunion on his right foot and corns on the third and fourth toes of the right foot, which he attributed to walking approximately six miles each day. On the reverse side of claim form, the employing establishment noted that appellant stopped work on March 9, 2015, but resumed his regular duties on March 12, 2015. No additional factual information or any medical evidence accompanied the claim form.

In an April 2, 2015 development letter, OWCP advised appellant that additional factual information and medical evidence was needed to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the requested information.

On March 4, 2015 Dr. Basimah Khulusi, a Board-certified physiatrist, diagnosed callus formation right third toe, valgus deformity first proximal interphalangeal (PIP) joints of the third toe, and hallux valgus deformity first toe on the right. She noted that appellant was employed as a letter carrier for 11 years, which required prolonged standing and walking. Dr. Khulusi noted alignment deformities on his right foot including hallux valgus deformity of the first big toe and valgus deformity of his PIP joints, which caused abnormal friction and calluses, corns, and bunions. She opined that appellant's right foot condition was caused or aggravated by his job duties.

In a progress report dated April 1, 2015, Dr. Khulusi diagnosed moderately severe hallux valgus deformity of the first metatarsophalangeal (MTP) joint of the right foot, dorsal displacement of the second digit with contractures of second MTP joint of the right foot, painful callus formation with keratosis, lateral right foot third toe, and hammertoe deformity, right foot third toe. She returned appellant to full-duty work.

In an April 9, 2015 statement, appellant listed hobbies outside of work of hiking, running, and working out in the gym. He noticed the bunion on his right foot in December 2014 and believed it developed due to prolonged walking each day while delivering mail. Appellant experienced a similar condition on his right foot in 2012 and had minor surgery on his toe.

By decision dated June 10, 2015, OWCP denied appellant's claim finding that he had not met his burden of proof to establish that the claimed medical condition was causally related to the established work-related events.

On December 16, 2015 appellant requested reconsideration.

A March 5, 2015 report from Dr. Stephen C. Wan, a podiatrist, noted appellant's complaints of right foot pain beginning in December 2014 which was exacerbated by standing, walking, and carrying mail as part of his postal duties. He noted findings on examination of moderately severe hallux valgus with bunion deformity on the right foot, lateral contracture of the first MTP joint, right hallux migrated laterally causing under riding of the second digit with the second toe dorsally displaced, and varus rotated and contracted proximal interphalangeal (PIP) joint of the right foot causing increased corn on the lateral aspect of the right third toe. X-rays revealed hypertrophy of the lateral condyle of the phalanx and lateral contracture of the right foot first MTP joint. Dr. Wan diagnosed moderately severe hallux valgus with bunion deformity on the right foot, dorsal displacement of second digit with contracture of second MTP joint right foot, painful callus formation with keratosis lateral right foot third toe, and hammertoe deformity, right foot third toe. He opined that even though the above-mentioned deformities were congenital appellant's work duties including walking and standing exacerbated these congenital deformities and accelerated his symptoms. Dr. Wan continued appellant's full-duty work status.

Appellant submitted a report from Dr. Khulusi dated December 10, 2015 which noted that the rubbing of the surfaces of the foot inside the shoe particularly where there was deformity caused calluses. In duty status reports (Form CA-17) dated June 10, 2015 to February 29, 2016, Dr. Khulusi noted clinical findings of right foot calluses and diagnosed right third and fifth toe calluses and right hallux valgus.

By decision dated March 15, 2016, OWCP denied modification of the June 10, 2015 decision.

On May 3, 2016 appellant requested reconsideration. He submitted a report from Dr. Khulusi dated April 21, 2016 in which she provided diagnoses and opined that appellant's work activities contributed to the pathology of his feet to a significantly larger percentage than the rest of appellant's activities. In a duty status report (Form CA-17) dated May 24, 2016, Dr. Khulusi noted clinical findings of calluses and diagnosed right third and fifth toe calluses, and right hallux valgus.

By decision dated July 29, 2016, OWCP denied modification of the March 15, 2016 decision.

On August 16, 2016 appellant requested reconsideration. He submitted an August 4, 2016 report from Dr. Khulusi who noted that she had provided a thorough discussion of causal relationship, but OWCP had failed to review her reports and improperly denied appellant's claim. In an August 23, 2016 duty status report (Form CA-17), Dr. Khulusi noted clinical findings of calluses and diagnosed right third and fifth toe calluses and right hallux valgus.

By decision dated November 10, 2016, OWCP denied modification of the July 29, 2016 decision.

On January 3, 2017 appellant requested reconsideration. He submitted a November 16, 2016 progress report from Dr. Khulusi who noted diagnoses and returned appellant to full-duty work. In a November 16, 2016 duty status report (Form CA-17), Dr. Khulusi noted clinical

findings of calluses and diagnosed right third and fifth toe calluses and right hallux valgus. On December 22, 2016 she recommended that appellant be referred to a podiatrist for evaluation.

By decision dated January 23, 2017, OWCP denied appellant's request for reconsideration, finding that the evidence submitted was insufficient to warrant a merit review.

On June 19, 2017 appellant again requested reconsideration. He submitted a progress report dated February 15, 2017 from Dr. Khulusi who noted diagnoses and continued appellant's full-time work status. Similarly, in a duty status report (Form CA-17) dated May 17, 2017, Dr. Khulusi noted clinical findings and diagnosed right third and fifth toe calluses and right hallux valgus.

A May 25, 2017 report from Dr. Wan noted that appellant presented after a two-year hiatus with increasing symptoms over the right foot at the first, second, and third MTP joints. He noted findings of moderately severe hallux valgus with bunion deformity on the right foot, lateral contracture of the first MTP joint, right hallux migrated laterally causing under riding of the second digit, joint crepitation of the second MTP joint on the right foot, rigid hammertoe deformities of the second and third toes, significant erythema over the dorsal aspect of the PIP joint of second toe, and instability in appellant's gait of the right forefoot. Dr. Wan diagnosed moderately severe hallux valgus with bunion deformity on the right foot, dorsal displacement of second digit with contracture of second MTP joint right foot, painful callus formation with keratosis lateral right foot third toe, and hammertoe deformity of the right foot third toe. He opined that even though the hallux valgus and bunion deformity represent an ongoing pathology they were exacerbated by increased weight bearing activities as a letter carrier, including carrying a satchel over his shoulder, prolonged standing, carrying weighted loads of 25 to 30 pounds, transversing uneven terrain, and ascending and descending steps. Dr. Wan prescribed supportive and cushioned shoes with a deep and wide toe box to accommodate his deformities and symptoms.

By decision dated September 11, 2017, OWCP denied appellant's request for reconsideration, finding that the evidence submitted was insufficient to warrant a merit review.

By appeal request form dated October 27, 2017, appellant again requested reconsideration.

A July 13, 2017 report from Dr. Wan noted increasing pain over the first MTP joint and second and third digits on the right foot exacerbated by weight bearing activities. He noted findings of hallux valgus with bunion deformity on the right first MTP joint, rigid hammertoe deformities of the second and third toes of the right foot, medial and dorsal contracture at second MTP joint causing the second digit to overlap on the right great toe, and instability in appellant's gait of the right forefoot. Dr. Wan diagnosed moderately severe hallux valgus with bunion deformity on the right foot, hammertoe deformity of the right foot second and third toe, and contracture of second MTP joint right foot with subluxation and predislocation syndrome. He opined that underlying hallux valgus and contracture of the MTP joints were exacerbated by increased weight bearing activities as a letter carrier would cause exacerbation of the clinical signs and symptoms. Dr. Wan opined that even though the hallux valgus and bunion deformity represented an ongoing pathology they were exacerbated by increased weight bearing activities as a letter carrier, including transversing uneven terrain, ascending and descending steps, and entering

and exiting his vehicle. He noted that it was of high medical probability that these work activities significantly exacerbated underlying preexisting pathologies.

By decision dated January 25, 2018, OWCP denied appellant's request for reconsideration, finding that the evidence submitted was insufficient to warrant a merit review.

### **LEGAL PRECEDENT**

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation.<sup>3</sup> The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.<sup>4</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>5</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>6</sup> If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>7</sup> If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>8</sup>

### **ANALYSIS**

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

On reconsideration, appellant has not shown that OWCP erroneously applied or interpreted a specific point of law or advanced a relevant legal argument not previously considered. The appeal request form he submitted merely noted that appellant was requesting reconsideration. Appellant did not elaborate further. Accordingly, the Board finds that appellant is not entitled to

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<sup>3</sup> 5 U.S.C. § 8128(a).

<sup>4</sup> *Id.* at § 8128(a).

<sup>5</sup> 20 C.F.R. § 10.606(b)(3); *see also* *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>6</sup> *Id.* at § 10.607(a).

<sup>7</sup> *Id.* at § 10.608(a); *see also* *M.S.*, 59 ECAB 231 (2007).

<sup>8</sup> *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(3).<sup>9</sup>

The Board further finds that appellant has not submitted relevant and pertinent new evidence not previously considered. In his July 13, 2017 report, Dr. Wan noted findings on examination and diagnosed moderately severe hallux valgus with bunion deformity on the right foot, hammertoe deformity of the right foot second and third toe, and contracture of second MTP joint right foot with subluxation and predislocation syndrome. However, this report is similar to appellant's prior reports dated March 5, 2015 and May 25, 2017, which were previously considered by OWCP and found to be insufficient. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>10</sup> Therefore, these reports are insufficient to require OWCP to reopen the claim for a merit review. Thus, appellant is also not entitled to a review of the merits of his claim based on the third above-noted requirement under section 10.606(b)(3).

The Board accordingly finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

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<sup>9</sup> 20 C.F.R. § 10.606(b)(3)(i), (ii).

<sup>10</sup> See *Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 25, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 27, 2019  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board